



Applicant: ERNEST W. MOODY

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For: MULTIPLE WAY STUD POKER GAMES

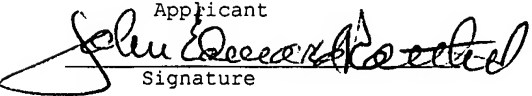
MAIL STOP APPEAL BRIEF -- PATENTS
Commissioner for Patents
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APPEAL BRIEF

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Ernest W. Moody
Applicant


Signature

June 20, 2005
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1. REAL PARTY IN INTEREST

This application has not been assigned or licensed, but it is under contract to be assigned to Action Gaming, Inc.

2. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

3. STATUS OF CLAIMS

Claims 1-12 are pending in this application. Claims 1-12 stand FINALLY rejected.

4. STATUS OF AMENDMENTS

There are no Amendments after the Final rejection of Claims 1-12.

5. SUMMARY OF THE CLAIMED SUBJECT MATTER

Appellants' invention relates to methods of playing a stud poker game.

Claim 1 is the first independent claim. A five card stud poker hand is displayed to the player. [Specification page 13:

lines 7-10].

If the five card stud poker hand comprises a predetermined arrangement of cards, the player is provided with an award. [13:19-14:1].

If a four card subset of the initial five card stud poker hand comprises a predetermined arrangement of cards, the player is provided with an award. [15:17-18].

If a three card subset of the initial five card stud poker hand comprises a predetermined arrangement of cards, the player is provided with an award. [17:14-18].

Dependent claims 2-6 specify that the predetermined arrangement of cards is based on poker hand rankings [7:12-8:1] and that the award is based on one or more pay tables [7:13-8:1].

Claim 7 is the other independent claim. Claim 7 also displays a five card stud poker hand to the player. [13:7-10]. For reference purposes, the cards of the five card hand are identified as card 1, card 2, card 3, card 4 and card 5. [12:15-17; Figure 1].

The player receives an award if all five cards comprise a

predetermined arrangement of cards. [13:9-14:1]. Then two separate subsets of the cards are used as four card hands: the first subset is card 1, card 2, card 3 and card 4; [12:19-20] the second subset is card 2, card 3, card 4 and card 5. [12:20-13:1].

The player receives an award if any of these four card subsets comprise a predetermined arrangement of cards. [15:17-18].

Then three separate subsets of the cards are used as three card hands: the first subset is card 1, card 2 and card 3; [13:3-4] the second subset is card 2, card 3 and card 4; [13:4-5] and the third subset is card 3, card 4 and card 5. [13:5-6]. The player receives an award if any of these three card subsets comprise a predetermined arrangement of cards. [17:14-18].

Dependent claims 7-12 specify that the predetermined arrangement of cards is based on poker hand rankings [7:12-8:1] and that the award is based on one or more pay tables. [7:13-8:1].

6. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-12 stand rejected under 35 U.S.C. 103 as being unpatentable over Crawford in view of Awada '943.

7. ARGUMENTS

Crawford discloses a draw poker game. The player is dealt five cards, the player discards unwanted cards and replacement cards are dealt for the discarded cards. The player then ends up with a final five card hand. The final five card hand is evaluated as a five card hand, and also as various three card hands and various four card hands being subcombinations of the final five card hand.

As disclosed in Crawford (col. 3, lines 22-23), the subcombinations to be evaluated are determined in advance. This is seen to be necessary so that the player can apply strategy to his hold and draw decisions. The Crawford method of play is clearly a game of skill since the player must analyze which cards to hold and which cards to discard and replace based on the probabilities of achieving and/or improving not only the overall five card hand, but also each of the less-than-five card subcombination hands.

There will be many instances in which the proper hold and draw strategy for the five card hand will be detrimental to the hold

and draw strategy for the subcombination hands.

For example, assume there are two three card subcombination hands being played along with the overall five hand. And assume the first three card subcombination is designated 3 Cards Left and the second three card subcombination is designated 3 Cards Right. Also, assume the player is dealt 7 Hearts, Q Spades, J Diamonds, Q Hearts and 7 Spades.

With regard to the five card hand, the player should discard the J Diamonds, hoping to make a Full House and at worst making Two Pair. However, if the J Diamonds is the only card discarded, the best the player can achieve on either of the three card hands is Jacks or better.

With regard to the three card hands, the optimal play would be to discard the 7 Hearts and the 7 Spades so that the player could achieve a three card straight or a pair of Jacks or better. However, if both 7's are discarded, then the player's chance of making a Full House in the five card hand becomes less likely (although the player could make four of a kind if he caught the other two Queens).

A player would have to be quite knowledgeable in math

probability as well as how this probability is affected by the payout amounts in the pay tables for the various winning combinations in order to make the proper hold and discard decisions to increase the probability of success in playing the game.

Appellant's invention removes all of the skill aspects of the method of play since Appellant's method of play is stud poker without any holding or discarding or replacement cards. Appellant's method of play as set out in Claims 1-12 simply deals the player a starting hand of five cards and then evaluates not only the full five card hand, but also various card subcombinations of the full five card hand. Winning combinations and subcombinations are paid according to a pay table.

There is no disclosure or suggestion in Crawford that his skill game could be modified by making it a stud poker game; in fact, to modify Crawford to remove the discard and draw steps of his game would be to defeat the basis for his method of play which is a skill poker game.

The Examiner recognizes the deficiencies of Crawford and relies on Awad '943 as the basis for modifying Crawford to make

Crawford a stud poker game.

Awad '943 discloses a stud poker game that uses community cards. In the Awad method of play, the player first gets three cards and the three card hand is evaluated for a winning combination. Then two community cards are displayed to the player and the resulting five card hand is evaluated for a winning combination. Then two more community cards are displayed to the player and the resulting seven card hand is evaluated for a winning combination.

The Awad method of play does not permit any variance of which cards are used as subcombinations for the hands having less than seven cards or hands having less than five cards. There are three designated cards as the three card hand and only these three designated cards are used as the three card hand. No other subcombination of cards can be used as the three card hand.

There are five designated cards as the five card hand and only these five designated cards are used as the five card hand. No other subcombination of cards can be used as the five card hand.

The Examiner takes the position that the method of play of Crawford can be changed into a stud poker game as suggested by

Awad '943.

What Awad teaches or suggests is a stud poker game that starts with three cards, progresses to five cards and ends with seven cards. If the teaching or suggestion of Awad were applied to Crawford, then the Crawford method of play would start with three cards and, at least, progress to five cards. This would eliminate the possibility in Crawford of using various subcombinations of cards as the various hands.

Thus, Appellant submits that the proposed combination of Crawford with Awad would not have been obvious to a person of ordinary skill in the art since the stud poker method of play of Awad actually teaches away from the method of play of Crawford and would destroy the skill aspect of the Crawford method of play.

In the Final Rejection, the Examiner also suggests that, since stud poker is a well known casino game, it would have been obvious to modify Crawford from a draw poker game to a stud poker game. The Examiner's asserted reason to do so is to shorten playing time and increase revenue. The Examiner offers no factual basis for this conclusion; rather none of the prior art relied on by the Examiner teaches or suggests the modification to Crawford that the Examiner proposes and, in fact, the modification to Crawford would destroy the skill features of the Crawford method of play.

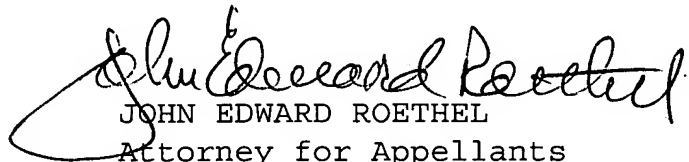
Appellant submits that the Examiner has therefore made an

improper rejection of Claims 1-12 under 35 U.S.C. 103.

8. CONCLUSION

Appellants submit that Claims 1-12 have been improperly rejected by the Examiner under 35 U.S.C. 103. Appellants respectfully request that the Board of Appeals reverse the Examiner's rejections of Claims 1-12 and remand this application to the Examiner for further action consisting of a Notice of Allowance.

Respectfully submitted,


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CLAIMS APPENDIX

Claim 1. A method of playing a stud poker game comprising:

- a) displaying a five card stud poker hand to the player;
- b) if the five card stud poker hand comprises a predetermined arrangement of cards, providing the player with an award;
- c) if a four card subset of the initial five card stud poker hand comprises a predetermined arrangement of cards, providing the player with an award; and
- d) if a three card subset of the initial five card stud poker hand comprises a predetermined arrangement of cards, providing the player with an award.

Claim 2. The method of Claim 1 in which the predetermined arrangement of cards is poker hand ranking and the award made to the player is based on a pay table.

Claim 3. The method of Claim 2 in which a first pay table is used for the five card hand, a second pay table is used for the four

card hand, and a third pay table is used for the three card hand.

Claim 4. The method of Claim 1 in which the player makes a wager to participate in the game and the wager is allocated among the initial five card hand, the four card subset of the five card hand and the three card subset of the five card hand.

Claim 5. The method of Claim 4 in which the predetermined arrangement of cards is poker hand ranking and the award made to the player is based on a pay table and the amount wagered by the player.

Claim 6. The method of Claim 5 in which a first pay table is used for the five card hand, a second pay table is used for the four card hand, and a third pay table is used for the three card hand.

Claim 7. A method of playing a stud poker game comprising:

- a) displaying a five card stud poker hand to the player, the hand consisting of card 1, card 2, card 3, card 4 and card 5;
- b) if the five card stud poker hand comprises a

predetermined arrangement of cards, providing the player with an award;

c) if a first four card subset of the initial five card stud poker hand consisting of card 1, card 2, card 3 and card 4 comprises a predetermined arrangement of cards, providing the player with an award;

d) if a second four card subset of the initial five card stud poker hand consisting of card 2, card 3, card 4 and card 5 comprises a predetermined arrangement of cards, providing the player with an award;

e) if a first three card subset of the initial five card stud poker hand consisting of card 1, card 2 and card 3 comprises a predetermined arrangement of cards, providing the player with an award;

f) if a second three card subset of the initial five card stud poker hand consisting of card 2, card 3 and card 4 comprises a predetermined arrangement of cards, providing the player with an award; and

g) if a third three card subset of the initial five card stud poker hand consisting of card 3, card 4 and card 5 comprises

a predetermined arrangement of cards, providing the player with an award.

Claim 8. The method of Claim 7 in which the predetermined arrangement of cards is poker hand ranking and the award made to the player is based on a pay table.

Claim 9. The method of Claim 8 in which a first pay table is used for the five card hand, a second pay table is used for the four card hands, and a third pay table is used for the three card hands.

Claim 10. The method of Claim 7 in which the player makes a wager to participate in the game and the wager is allocated among the initial five card hand, the four card subsets of the five card hand and the three card subsets of the five card hand.

Claim 11. The method of Claim 10 in which the predetermined arrangement of cards is poker hand ranking and the award made to the player is based on a pay table and the amount wagered by the

player.

Claim 12. The method of Claim 11 in which a first pay table is used for the five card hand, a second pay table is used for the four card hands, and a third pay table is used for the three card hands.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None